



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20541

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B-179011

July 12, 1973

The Honorable Donald E. Johnson  
Administrator, Veterans Administration

Dear Mr. Johnson:

Reference is made to letter 1340 dated June 26, 1973, with enclosures, from the Director, Supply Service, Department of Medicine and Surgery, requesting a decision as to the action to be taken in regard to the bid of Sealtest Foods, submitted in response to invitation for bids (IFB) No. 74-15.

The invitation, issued by the Veterans Administration Hospital, Nashville, Tennessee, solicited bids for milk, buttermilk, cream and cottage cheese products for a 6-month and a 1-year period, commencing on July 1, 1973.

Bids were opened on June 6, 1973. Upon review of the bids, the contracting officer determined that there was an obvious error in Sealtest's offer for item 8 (\$0.07) for one-half-gallon containers of low fat milk for the hospital's estimated requirement for the 12-month period. This determination was reached because Sealtest's offer for the 6-month period on the identical item, but half of the quantity, was \$0.47. By letter of June 7, 1973, Sealtest stated that the item 8 offer should have been \$0.47. The contracting officer determined that Sealtest intended that the total for item 8 should have been increased in the amount of \$1,200, since item 8 listed an estimated quantity of 3,200 one-half-gallon containers. Further review noted an erroneous addition in items 1-10 for the 6-month hospital requirements. This total should have read \$17,711.75 in lieu of \$17,701.75.

It was the contracting officer's opinion that in view of the obvious error and the pattern of bidding in the bid, Sealtest should be allowed to correct its bid price, which would still permit Sealtest to remain the lowest bidder.

In regard to an alleged error in bid, our Office has held that to permit correction prior to award, a bidder must submit clear and convincing evidence that an error has been made, the manner in which the error occurred, and the intended bid price. See 49 Comp. Gen. 480, 482 (1970); B-173031, September 17, 1971. The same basic requirements for the correction of a bid are found in section 1-2.42-3(a)(2) of the Federal Procurement Regulations (FPR) which provides:

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A determination may be made permitting the bidder to correct his bid where the bidder requests permission to do so and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. \* \* \*

Further, FPR sec. 1-2.406-2 states that:

Any clerical mistake, apparent on the face of a bid, may be corrected by the contracting officer prior to award, if the contracting officer has first obtained from the bidder verification of the bid actually intended. \* \* \*

The addition error in the 6-month portion was apparent on the face of the bid. Item 6 in the 12-month portion also was in apparent error. The same product had been bid upon in the 6-month portion at a unit cost of \$0.47. None of the other 12-month costs were lower than the 6-month costs; rather, such 12-month costs usually ran 1.43 to 5.7 percent higher. If we were to assume that Sealtest had intended the highest percentage increase on item 6 of 5.7 percent, this would have resulted in a maximum unit price of \$0.50 or \$95 overall. On this basis, Sealtest still remains the low bidder. In fact, the difference in bids is such that the Sealtest unit price could be increased by as much as \$0.90, almost 200 percent, before it would equal the next low bid.

Although we are unable to determine the exact amount of Sealtest's intended bid, this in itself would not preclude correction of the bid. 42 Comp. Gen. 723 (1953). That decision stated that if the evidence is clear and convincing that the mistaken bidder would have been the lowest bidder, absent error in its bid, even though the amount of its correct or "intended" bid could not be clearly proven, it would not be prejudicial to other bidders if the mistaken bidder received the award.

Sealtest's letter of June 7 has stated that it intended a \$0.47 bid price. Sealtest's bid, after correction, would remain the lowest bid submitted. The actual bid intended is not apparent on the face of the bid. See 46 Comp. Gen. 77,412 (1956), regarding correction of clerical mistakes. Also, Sealtest was not requested to provide worksheets establishing the intended bid and has not furnished any. Nevertheless, it is apparent from the bid on the 6-month portion and the increases on the 12-month portion that the bid of Sealtest would not have been less than \$0.47 per unit. Further, it is most unlikely that the bid would have exceeded the next low bid considering the difference between the total bids and the prices (\$0.32 and \$0.54) quoted by the other bidders for the item. It has been the view of our Office that regardless of the good faith or the party or parties involved, correction should be denied in any case in which there exists any reasonable basis for argument that public confidence in the integrity of the competitive bidding system would

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be adversely affected thereby. See 48 Comp. Gen. 748, 751 (1969). That does not appear to be the situation in the immediate case.

Therefore, the law bid should be corrected as verified.

Sincerely yours,

Paul G. Deabling

Acting Comptroller General  
of the United States